

BRANCART & BRANCART  
 Christopher Brancart (SBN 128475)  
 Liza Cristol-Deman (SBN 190516)  
 Post Office Box 686  
 Pescadero, CA 94060  
 Tel: (650) 879-0141  
 Fax: (650) 879-1103  
[cbrancart@brancart.com](mailto:cbrancart@brancart.com)  
[lcristoldeman@brancart.com](mailto:lcristoldeman@brancart.com)

Attorneys for all Plaintiffs

PROTECTION & ADVOCACY, INC.  
 Stuart Seaborn (SBN 198590)  
 Dara Schur (SBN 98638)  
 Eric Gelber (SBN 95256)  
 100 Howe Ave. Suite 235N  
 Sacramento, CA 95825  
 Tel: (916) 488-9950  
 Fax: (916) 488-9960  
[stuart.seaborn@pai-ca.org](mailto:stuart.seaborn@pai-ca.org)

Attorneys for Ruby Duncan, Eva Northern,  
 and Class Plaintiffs Only

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

**GREATER NAPA FAIR HOUSING  
 CENTER, a California Not for Profit  
 Corporation, doing business as  
 FAIR HOUSING NAPA VALLEY, as  
 an individual entity only; et al.,**  
  
**Plaintiffs,**  
  
**vs.**  
  
**HARVEST REDWOOD  
 RETIREMENT RESIDENCE, L.L.C.,  
 doing business as Redwood  
 Retirement Residence; et. al,**  
  
**Defendants.**

Case No. C07-3652 PJH

**PLAINTIFFS' RESPONSE TO  
 DEFENDANTS' OBJECTIONS TO  
 DECLARATIONS IN SUPPORT OF  
 PLAINTIFFS' MOTION FOR  
 PRELIMINARY INJUNCTION**

**HEARING:**

Date: September 26, 2007  
 Time: 9:00 a.m.  
 Place: 450 Golden Gate Ave.,  
 Courtroom 3, 17<sup>th</sup> Floor

Defendants Harvest Redwood Retirement, LLC, Redwood Retirement Residence,  
 Redwood Retirement Residence LLC, and Holiday Retirement Corporation (hereinafter  
 "Defendants") submitted a lengthy list of evidentiary objections to declarations Plaintiffs  
 submitted in support of the Motion for Preliminary Injunction. As shown below, Defendants'

1 attempt to exclude these declarations on admissibility grounds fails to apply the appropriate  
 2 evidentiary standards applicable to a motion for preliminary injunction and is based on an  
 3 incorrect reading of the Federal Rules of Evidence.<sup>1</sup> Accordingly, the Court should overrule  
 4 Defendants' objections and consider the evidence Plaintiffs have submitted by declaration as it  
 5 decides on the Motion for Preliminary Injunction.

6  
 7 **I. Defendants' Objections Fail to Apply the Appropriate Evidentiary Standards for**  
 8 **Consideration of Declarations Submitted in Support of a Motion for Preliminary**  
 9 **Injunction**

10 Defendants Objections fail to take into account the context of this hearing. Unlike the  
 11 standards for evidence submitted at trial, Courts may consider evidence that may be inadmissible  
 12 at trial in the context of a motion for preliminary injunction. *See The Republic of the*  
 13 *Phillippines v. Marcos*, 862 F.2d 1355, 1363 (9<sup>th</sup> Cir. 1988); *Flynt Distrib. Co., Inc. v. Harvey*,  
 14 734 F.2d 1389, 1394 (9<sup>th</sup> Cir. 1984) ("The urgency of obtaining a preliminary injunction  
 15 necessitates a prompt determination and makes it difficult to obtain affidavits from persons who  
 16 would be competent to testify at trial. The trial court may give even inadmissible evidence some  
 17 weight, when to do so serves the purpose of preventing irreparable harm before trial.") Among  
 18 the items Courts may consider to make a determine on preliminary relief are declarations  
 19 containing hearsay. *Id.* As such, Defendants' numerous hearsay objections, regardless of their  
 20 validity under the Federal Rules of Evidence, should not be considered in the context of this  
 21 Motion.

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 27 <sup>1</sup> Rather than address each objection individually, Plaintiffs submit this Response to  
 28 demonstrate how Defendants' failure to use the appropriate evidentiary standards in the context  
 of a motion for preliminary injunction and their misreading of the Federal Rules of Evidence  
 invalidate all of their objections to Plaintiffs' declarations.

**II. Many of the Statements Defendants Object to Are Admissible as Admissions by a Party Opponent or Under the Exceptions to Hearsay Rule**

Even if the Court were to apply the strict standards of the Federal Rules of Evidence, including the limitations on hearsay evidence, Defendants have failed to show that the declaration testimony Plaintiffs submitted is inadmissible. For example, Defendants object to Plaintiffs' submission of numerous statements made by Defendants' own staff and management while they were acting in the scope of their employment relationship. As such, all of these statements are considered admissions by a party opponent under Fed. R. Evid. 801(d)(2) and, are therefore, not hearsay.

Defendants also object to multiple statements involving Redwood residents' expressions of emotions, such as fear and sadness (*e.g.* the statement in paragraph 7 of Priscilla Valencia's declaration: "I went to see Mr. Mitchell and asked why he was crying . . . Mr. Mitchell told me he was sad because he did not want to leave, and had nowhere to go.") Plaintiffs have not offered such statements to prove the truth of the matter asserted, but rather to show residents' existing emotional states when they made these statements. As such, these statements are admissible under the exceptions to the Hearsay Rule. Fed. R. Evid. 803(3).

**III. Conclusion**

Defendants failure to apply the appropriate evidentiary standards to the Court's consideration of declaration testimony in the context of a motion for preliminary injunction and their incorrect application of the Federal Rules of Evidence render their objections to Plaintiffs' declarations void, and, therefore, the Court should consider all of the testimony in these declarations as it makes its determination on the Motion for Preliminary Injunction.

DATED: September 12, 2007

Respectfully submitted,  
BRANCART & BRANCART  
PROTECTION & ADVOCACY, INC.



Stuart Seaborn  
Attorneys for Plaintiffs